

Add Article 5.5 (commencing with Section 30360) to Chapter 5 of the Cigarette And Tobacco Products Tax Law; add Article 3.5 (commencing with Section 32375) to Chapter 7 of the Alcoholic Beverage Tax Law; add Article 3.5 (commencing with Section 40164) to Chapter 6 of the Energy Resources Surcharge Law; add Article 1.5 (commencing with Section 41119.5) to Chapter 6 of the Emergency Telephone Users Surcharge Law; add Article 4.5 (commencing with Section 43435) to Chapter 4 of the Hazardous Substances Tax Law; add Article 4.5 (commencing with Section 45555) to Chapter 4 of the Integrated Waste Management Fee Law; add Article 4.5 (commencing with Section 50131.5) to Chapter 4 of the Underground Storage Tank Maintenance Fee Law; and add Article 4.5 (commencing with Section 55185) to Chapter 4 of the Fee Collection Procedures Law (exclusive of Water Rights Fee Law) to hold a successor liable for any amounts due under the respective part if the successor does not obtain a certificate from the Board stating that no amounts are due.

Source: Property and Special Taxes Department

Existing Law

Under the various Special Taxes and Fees programs in the Revenue and Taxation Code (RTC), the Board may collect the tax or fee (tax) from a business that incurs a liability. There are times when a business is sold in an arms-length transaction in which the parties retain an escrow company to hold funds in trust pending the satisfaction of the conditions of the sale. In other cases, the parties may not utilize a third party and may deal directly with each other, where they may or may not make use of a contract. The parties may or may not take the assumption of tax liability into consideration and reduce the purchase price by a corresponding amount. However, some businesses are transferred between related parties in an effort by those parties to avoid payment of taxes. In these instances, there are no provisions that require the seller or purchaser of the business, or the related transferee and transferor, to satisfy the tax liability that has been imposed on the predecessor business under the respective RTC programs to which it is proposed successor liability provisions be added.

Under existing law, the Board's Sales and Use Tax Department (SUTD) has utilized Sections 6811 through 6815 (Payment on Termination of Business and Successor's Liability) of the RTC, to require the seller/predecessor and purchaser/successor to address a Sales Tax liability owed by the seller. The purchaser is required to withhold sufficient monies from the purchase price to cover any amount of taxes due unless the former owner produces a receipt (Certificate of Tax Payment) from the Board showing that the tax has been paid or a certificate stating that no amount is due. Otherwise, the successor becomes liable for payment of the amount, to the extent of the purchase price valued in money. The "Certificate of Tax Payment" or Tax Clearance is normally handled

through escrow and, in most cases, is a condition of the escrow. The process is a proactive effort on the part of the seller to make available to the Board the proceeds of the sale of the business. In those cases where the purchaser or seller fails to produce a Certificate of Tax Payment, or the purchaser fails to withhold the amount of the liability, to the extent of the purchase price, or the purchaser assumes certain liabilities, then the law allows the Board to extend to the purchaser of a business the liability of the seller. This is known as successor's liability.

This Proposal

This proposal would allow the Special Taxes programs the opportunity to collect a tax when a business is sold. The proposed provisions include the same requirements that the SUT law does, which require the seller and purchaser to obtain a Certificate of Tax Payment, or the purchaser to withhold the amount of the liability, to the extent of the purchase price. In those cases where the purchaser or seller fails to produce a Certificate of Tax Payment, or the purchaser fails to withhold the amount of the liability, to the extent of the purchase price, or the purchaser assumes certain liabilities, then this proposal authorizes the Board to extend to the purchaser of a business the liability of the seller.

As it stands now, successor's liability is available under the following tax programs: SUT, Motor Vehicle Fuel, Use Fuel, Oil Spill Response, Diesel Fuel, Timber Yield Tax, and Private Railroad Car Tax. In order to maintain consistency and to decrease tax or feepayer (taxpayer) confusion, the Special Taxes programs seek to extend this collection action to the remaining tax programs. Confusion can arise where a seller of a business has requested a clearance from the Board and is provided one, but still owes amounts under other tax programs for which a clearance is not required.

Certain types of businesses are required to register, report, and collect more than one type of tax with the Board. Generally, these businesses have a Sales Tax permit with the Board for the sale of tangible personal property, and they are also responsible for collection of other taxes related to the products that they sell. For example, micro-brewery restaurants and vineyard specialty stores could have both sales tax and alcoholic beverage tax responsibilities. Businesses that are retailers of tires or televisions and other covered electronic devices (CED's) would be required to report and collect sales tax and the California Tire Fee or Electronic Waste Recycling Fee. Approximately 20% of the licensed cigarette and tobacco products distributors report and pay the cigarette tax, sales tax, and one or another fuel or environmental tax or fee to the Board. The incidence of sales tax account-holders having additional tax responsibilities has increased because of changes in the types of fees and taxes being collected by the Board and changes that have occurred in certain industries.

The Board's Revenue Database Consolidation, which was just completed in 2004, now permits the Board to easily identify each taxpayer's tax liabilities. If the proposed provisions are added to the rest of the Special Taxes and Fees programs, the procedures would be consistent for issuing a clearance certificate to the seller and purchaser for all of the seller's tax liabilities, assuring the parties that they have a "clean bill of health."

In addition, this proposal seeks to address a current loophole in the SUT language by addressing transfers of businesses made between related persons, as defined, so that a business cannot be transferred for the purposes of evading payment of tax liabilities. This language has been added to discourage the practice of "churning" business ownership. "Churning" is a practice wherein a debtor transfers ownership of a business for little or no consideration for the purpose of shielding the assets of the business from creditors. By misrepresenting the true ownership of the business, the debtor can continue to operate his business without paying liabilities owed to the Board.

SUTD surveyed its district offices for examples of cases where a business was transferred between related persons, as defined in the proposal, in which there was no tax clearance processed, and where there was no ability to pursue the successor business for payment of the predecessor's liability. These examples excluded transfers such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy. There were 62 accounts identified with a value of \$11.6 million in tax liability. The following are examples of the "related" transfers:

- A sole proprietor auto dealer closed his business and incorporated with himself as the corporate officer. He continued to operate at the same place of business with a similar business name. The preceding business has a fraud audit liability of \$1.8 million and the succeeding business also incurred a separate fraud audit liability for \$1.9 million. There was no sale of the business, but, under current law, the liability of the predecessor could not be pursued against the successor.
- An individual operated a car cover business and incurred a tax liability of \$334,423. After being pursued for collections, the individual incorporated and continued to operate at the same place of business. He went on to incur an additional \$27,257 in liabilities and continues to operate free from the preceding business's liability.
- A sole proprietor retailer of boats incurred a tax liability of \$195,782, with an additional \$467,437 currently in petition status. The individual incorporated his business, continues to operate at the same location, and went on to incur an additional \$63,948 in liability. The Board is unable to pursue successor's liability without the proposed language.

In summary, this proposal would give the Board its best opportunity to satisfy all outstanding liabilities. With corporations and limited liability companies, the business assets may be the only assets of the seller that can be used to pay off the Board's liabilities. Once the assets are dissipated, future collections become problematic and would likely result in the accounts being written off.

The proposal also coincides with the completion of the Revenue Database Consolidation (RDC) Project. RDC now makes it possible for Special Taxes and Fees information, such as registration, accounts receivable, and audit information, to be viewed by staff statewide. An expanded Tax Clearance process would allow the taxpayer to clear all of his obligations at one time, which is an effective and efficient way of doing business. As it stands now, it is possible to receive a Tax Clearance for Sales Tax and still owe taxes under several other Board programs.

Section 30345 of the Cigarette and Tobacco Products Tax Law is added to read:

30345 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 30345.1 of the Cigarette and Tobacco Products Tax Law is added to read:

30345.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

Section 30345.2 of the Cigarette and Tobacco Products Tax Law is added to read:

30345.2 (a) Notwithstanding Section 30345.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.
2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.
6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - i. retention of the same employees;
 - ii. retention of the same supervisory personnel;
 - iii. retention of the same production facilities in the same physical location;
 - iv. production of the same product;
 - v. retention of the same name;
 - vi. continuity of assets;
 - vii. continuity of general business operations;
 - viii. continuity of customers; and
 - ix. the successor is holding itself out as the continuation of the predecessor.

7. Inadequate cash consideration was paid for the predecessor's assets.
8. Less than fair market value was paid for the predecessor's assets.
9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 30345.3 of the Cigarette and Tobacco Products Tax Law is added to read:

30345.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 30141.

Section 30345.4 of the Cigarette and Tobacco Products Tax Law is added to read:

30345.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the business. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 30261) of Chapter 4 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 30345.5 of the Cigarette and Tobacco Products Tax Law is added to read:

30345.5 If at the time a business is discontinued the board holds security pursuant to Section 30141 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Section 32375 of the Alcoholic Beverage Tax Law is added to read:

32375 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 32375.1 of the Alcoholic Beverage Tax Law is added to read:

32375.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

_____ (b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

_____ (2) For purposes of paragraph (1), the latest of the following dates shall apply:

_____ (A) The date the board receives a written request from the purchaser for a certificate.

_____ (B) The date of the sale of the business or stock of goods.

_____ (C) The date the former owner's records are made available for audit.

_____ (c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

Section 32375.2 of the Alcoholic Beverage Tax Law is added to read:

32375.2 (a) Notwithstanding Section 32375.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.
2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.
6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - (A) retention of the same employees;
 - (B) retention of the same supervisory personnel;
 - (C) retention of the same production facilities in the same physical location;
 - (D) production of the same product;
 - (E) retention of the same name;
 - (F) continuity of assets;
 - (G) continuity of general business operations;
 - (H) continuity of customers; and
 - (I) the successor is holding itself out as the continuation of the predecessor.
7. Inadequate cash consideration was paid for the predecessor's assets.
8. Less than fair market value was paid for the predecessor's assets.
9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 32375.3 of the Alcoholic Beverage Tax Law is added to read:

32375.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of

the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 32102.

Section 32375.4 of the Alcoholic Beverage Tax Law is added to read:

32375.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the business. The successor may petition for reconsideration in the manner provided in Article 4 (commencing with Section 32301) of Chapter 6 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 32375.5 of the Alcoholic Beverage Tax Law is added to read:

32375.5 If at the time a business is discontinued the board holds security pursuant to Section 32102 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Section 40164 of the Energy Resources Surcharge Law is added to read:

40164 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to

cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 40164.1 of the Energy Resources Surcharge Law is added to read:

40164.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

Section 40164.2 of the Energy Resources Surcharge Law is added to read:

40164.2 (a) Notwithstanding Section 40164.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.

2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.
6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - (A) retention of the same employees;
 - (B) retention of the same supervisory personnel;
 - (C) retention of the same production facilities in the same physical location;
 - (D) production of the same product;
 - (E) retention of the same name;
 - (F) continuity of assets;
 - (G) continuity of general business operations;
 - (H) continuity of customers; and
 - (I) the successor is holding itself out as the continuation of the predecessor.
7. Inadequate cash consideration was paid for the predecessor's assets.
8. Less than fair market value was paid for the predecessor's assets.
9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 40164.3 of the Energy Resources Surcharge Law is added to read:

40164.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 40036.

Section 40164.4 of the Energy Resources Surcharge Law is added to read:

40164.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the

business. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 40091) of Chapter 4 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 40164.5 of the Energy Resources Surcharge Law is added to read:

40164.5 If at the time a business is discontinued the board holds security pursuant to Section 40036 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Section 41119.5 of the Emergency Telephone Users Surcharge Law is added to read:

41119.5 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 41119.5.1 of the Emergency Telephone Users Surcharge Law is added to read:

41119.5.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes

personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

Section 41119.5.2 of the Emergency Telephone Users Surcharge Law is added to read:

41119.5.2 (a) Notwithstanding Section 41119.5.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.
2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor

remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.

6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - a. retention of the same employees;
 - b. retention of the same supervisory personnel;
 - c. retention of the same production facilities in the same physical location;
 - d. production of the same product;
 - e. retention of the same name;
 - f. continuity of assets;
 - g. continuity of general business operations;
 - h. continuity of customers; and
 - i. the successor is holding itself out as the continuation of the predecessor.
7. Inadequate cash consideration was paid for the predecessor's assets.
8. Less than fair market value was paid for the predecessor's assets.
9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 41119.5.3 of the Emergency Telephone Users Surcharge Law is added to read:

41119.5.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 41041.

Section 41119.5.4 of the Emergency Telephone Users Surcharge Law is added to read:

41119.5.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the business. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 41085) of Chapter 4 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter

with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 41119.5.5 of the Emergency Telephone Users Surcharge Law is added to read:

41119.5.5 If at the time a business is discontinued the board holds security pursuant to Section 41041 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Section 43435 of the Hazardous Substances Tax Law is added to read:

43435 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 43435.1 of the Hazardous Substances Tax Law is added to read:

43435.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the

board, of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

Section 43435.2 of the Hazardous Substances Tax Law is added to read:

43435.2 (a) Notwithstanding Section 43435.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.
2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.
6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - (A) retention of the same employees;
 - (B) retention of the same supervisory personnel;
 - (C) retention of the same production facilities in the same physical location;
 - (D) production of the same product;

- (E) retention of the same name;
 - (F) continuity of assets;
 - (G) continuity of general business operations;
 - (H) continuity of customers; and
 - (I) the successor is holding itself out as the continuation of the predecessor.
- 7. Inadequate cash consideration was paid for the predecessor's assets.
 - 8. Less than fair market value was paid for the predecessor's assets.
 - 9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 43435.3 of the Hazardous Substances Tax Law is added to read:

43435.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 43102.

Section 43435.4 of the Hazardous Substances Tax Law is added to read:

43435.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the business. The successor may petition for reconsideration in the manner provided in Article 4 (commencing with Section 43301) of Chapter 3 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 43435.5 of the Hazardous Substances Tax Law is added to read:

43435.5 If at the time a business is discontinued the board holds security pursuant to Section 43102 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Section 45555 of the Integrated Waste Management Fee Law is added to read:

45555 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 45555.1 of the Integrated Waste Management Fee Law is added to read:

45555.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

_____ (b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

_____ (2) For purposes of paragraph (1), the latest of the following dates shall apply:

_____ (A) The date the board receives a written request from the purchaser for a certificate.

_____ (B) The date of the sale of the business or stock of goods.

_____ (C) The date the former owner's records are made available for audit.

_____ (c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three

years after the date the board is notified of the purchase of the business or stock of goods.

Section 45555.2 of the Integrated Waste Management Fee Law is added to read:

45555.2 (a) Notwithstanding Section 45555.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.
2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.
6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - a. retention of the same employees;
 - b. retention of the same supervisory personnel;
 - c. retention of the same production facilities in the same physical location;
 - d. production of the same product;
 - e. retention of the same name;
 - f. continuity of assets;
 - g. continuity of general business operations;
 - h. continuity of customers; and
 - i. the successor is holding itself out as the continuation of the predecessor.
7. Inadequate cash consideration was paid for the predecessor's assets.
8. Less than fair market value was paid for the predecessor's assets.
9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 45555.3 of the Integrated Waste Management Fee Law is added to read:

45555.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 45102.

Section 45555.4 of the Integrated Waste Management Fee Law is added to read:

45555.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the business. The successor may petition for reconsideration in the manner provided in Article 3 (commencing with Section 45301) of Chapter 3 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 45555.5 of the Integrated Waste Management Fee Law is added to read:

45555.5 If at the time a business is discontinued the board holds security pursuant to Section 45102 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Section 50131.5 of the Underground Storage Tank Maintenance Fee Law is added to read:

50131.5 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 50131.5.1 of the Underground Storage Tank Maintenance Fee Law is added to read:

50131.5.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

Section 50131.5.2 of the Underground Storage Tank Maintenance Fee Law is added to read:

50131.5.2 (a) Notwithstanding Section 45555.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.
2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.
6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - a. retention of the same employees;
 - b. retention of the same supervisory personnel;
 - c. retention of the same production facilities in the same physical location;
 - d. production of the same product;
 - e. retention of the same name;
 - f. continuity of assets;
 - g. continuity of general business operations;
 - h. continuity of customers; and
 - i. the successor is holding itself out as the continuation of the predecessor.
7. Inadequate cash consideration was paid for the predecessor's assets.
8. Less than fair market value was paid for the predecessor's assets.
9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 50131.5.3 of the Underground Storage Tank Maintenance Fee Law is added to read:

50131.5.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 45102.

Section 50131.5.4 of the Underground Storage Tank Maintenance Fee Law is added to read:

50131.5.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the business. The successor may petition for reconsideration in the manner provided in Article 3 (commencing with Section 45301) of Chapter 3 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 50131.5.5 of the Underground Storage Tank Maintenance Fee Law is added to read:

50131.5.5 If at the time a business is discontinued the board holds security pursuant to Section 45102 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Section 55011 of the Fee Collection Procedures Law is added to read:

55011 The fee imposed pursuant to Sections 1525 and 1528 of Chapter 8 of Part 2 of Division 2 and Section 13160.1 of Chapter 3 of Division 7 of the Water Code shall be administered and collected by the board in accordance with this part, except that sections 55185 through 55185.5 (pertaining to successor liability), and section 55210 (pertaining to liability of corporate officers and other persons), shall not apply to fees administered and collected by the board pursuant to this section.

Section 55185 of the Fee Collection Procedures Law is added to read:

55185 If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 55185.1 of the Fee Collection Procedures Law is added to read:

55185.1 (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

Section 55185.2 of the Fee Collection Procedures Law is added to read:

55185.2 (a) Notwithstanding Section 55185.1, if the business or stock of goods is transferred or assigned to a related person, the related person shall be deemed to have assumed all of the liabilities of the predecessor under this part.

(b) The transfer is deemed to be to a related person if any of the following apply:

1. The predecessor and the successor are owned or controlled by the same persons.
2. The predecessor and the successor are related as parent and child, siblings, cousins, or aunt or uncle and niece or nephew.
3. The successor was a partner of the predecessor.
4. The transfer is, in fact, a consolidation or merger that includes the predecessor.
5. The successor is a mere continuation of the predecessor, where the predecessor no longer exists and only the successor remains and there is an identity of stock, stockholders, and directors between the predecessor and the successor.
6. The successor is a substantial continuation of the predecessor, which may include, but is not limited to:
 - a. retention of the same employees;
 - b. retention of the same supervisory personnel;
 - c. retention of the same production facilities in the same physical location;
 - d. production of the same product;
 - e. retention of the same name;
 - f. continuity of assets;
 - g. continuity of general business operations;
 - h. continuity of customers; and
 - i. the successor is holding itself out as the continuation of the predecessor.
7. Inadequate cash consideration was paid for the predecessor's assets.
8. Less than fair market value was paid for the predecessor's assets.
9. The sale was fraudulently made with the intent to escape the tax liability imposed under this part.

Section 55185.3 of the Fee Collection Procedures Law is added to read:

55185.3 The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 55022.

Section 55185.4 of the Fee Collection Procedures Law is added to read:

55185.4 (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods or the transfer of the business. The successor may petition for reconsideration in the manner provided in Article 3 (commencing with Section 55081) of Chapter 3 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 55185.5 of the Fee Collection Procedures Law is added to read:

55185.5 If at the time a business is discontinued the board holds security pursuant to Section 55022 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.